

ATTACHMENT B

NorthPoint Complaint



NorthPoint

222 Sutter Street, 7th Floor
San Francisco, CA 94108
415/403-4003

March 12, 1999

BY HAND

Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Robert C. Atkinson
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
Room 5-C356
445 Twelfth Street, SW
Washington, DC 20554

Frank G. Lamancusa
Chief, Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, NW
Washington, DC 20554

Re: **Bell Atlantic's Failure to Provide Nondiscriminatory Interconnection,
Collocation, UNEs and OSS**

Gentlemen:

NorthPoint Communications ("NorthPoint") hereby provides notice of its intention to invoke the jurisdiction of the Commission for expedited resolution of pending disputes with Bell Atlantic. These disputes concern the implementation of the local competition provisions of the Communications Act of 1934 (as amended by the Telecommunications Act of 1996), this Commission's Rules and Orders, and various provisions of Bell Atlantic's interconnection agreements.

NorthPoint has, through various formal and informal means over the last six months, attempted to resolve outstanding difficulties with Bell Atlantic. To date these efforts have proven unsuccessful. Bell Atlantic continues to enforce policies and to undertake practices that have the effect of significantly diminishing the speed of delivery and quality of NorthPoint's broadband DSL services to end users in Boston, Washington, D.C., and New York. These delays also threatens the success of NorthPoint's final preparations to "turn-up" services in Baltimore, Pittsburgh and Philadelphia, and come at a time when Bell Atlantic speeds the deployment of its own competitive DSL offerings. Consequently, these disputes demand prompt resolution.

NorthPoint is today providing a copy of this letter to appropriate executives at Bell Atlantic.

NorthPoint requests that the Commission intervene as quickly as possible to facilitate quick resolution of the issues detailed in this letter.¹

I. Introduction

NorthPoint Communications ("NorthPoint") is a national data-CLEC providing high-speed data service over the "last mile" of copper facilities. NorthPoint is providing service in 12 markets and expanding to 28 by the end of 1999.

NorthPoint is one of the first to offer DSL services nationwide. NorthPoint is an innovator in the provision of DSL services to under-served small-businesses and residential customers. By establishing its presence quickly in many markets, NorthPoint is often the first to provide cost-effective, high-quality broadband services, and is securing strategic partnerships with Network Service Providers (NSPs) who seek to capitalize on the promise of high-speed data services.

The DSL market is growing quickly. Popular awareness of DSL is growing, demand for broadband is expanding, and providers of network and Internet services increasingly perceive securing broadband access to customers as essential. The incumbent LECs are now entering the market to meet this demand, and are emphasizing their size and scope as a competitive advantage in securing their own partnerships. Bell Atlantic and America Online have recently announced a partnership to offer "infospeed" DSL services to 14 million Bell Atlantic customers by the end of 2000 (Multichannel News, 1/18/1999) and SBC and America Online announced on March 11, 1999, their arrangement to offer bundled DSL services in seven states.

The Incumbent LECs trail the DSL deployment of the competitive LECs. Despite their plans, the incumbent LECs, including Bell Atlantic, trail competitive data-CLECs such as NorthPoint in network deployment as well as the scope of their product offerings. (See "NorthPoint Says It Will Surpass Baby Bells in DSL Market Reach," *Wall Street Journal Online*, December 4, 1998.) In the Bell Atlantic region, for example, NorthPoint has been providing DSL services to end users in the greater New York, Boston, and Washington D.C. areas since autumn 1998 and is poised to introduce service in Baltimore, Pittsburgh and Philadelphia soon. Most incumbents limit their broadband services to Asymmetric DSL (ADSL) and only provide it to end users within 12-18,000 feet of a central office. NorthPoint and other competitive data-CLECs offer a variety of broadband solutions, including Symmetric DSL (which is more suitable for small business needs and can readily substitute for more costly T1 services) and IDSL, which can be deployed to end users more than 40,000 feet from a central office.

¹ At this time, NorthPoint has made no determination whether it is appropriate to sever claims for liability and damages for separate resolution in the Accelerated Complaint procedures.

Bell Atlantic is disadvantaging competing providers of DSL services by failing to adequately support NorthPoint's legitimate provisioning expectations. The excitement about and demand for DSL services make this a crucial window of opportunity to expand commercial arrangements and enhance the strength of the NorthPoint brand. This makes the persistence of Bell Atlantic's anti-competitive acts especially troubling. Though NorthPoint deployed its offerings well ahead of Bell Atlantic to exploit the market advantages of early entry, Bell Atlantic's acts undermine that advantage and limit consumer broadband alternatives. Its failure to abide by its obligations under the Telecommunications Act and Commissioner orders – such as refusing to make available DSL capable loops in a given market until Bell Atlantic begins offering a retail DSL service of its own – to its repeated and frustrating “errors” – such as mismanaging or losing collocation applications, arbitrarily terminating NorthPoint's “live” customers, and failing to deliver working circuits – Bell Atlantic defies Commission rules and the obligations of its own contracts.

II. Summary of Claims

This complaint sets forth 13 specific ways in which Bell Atlantic continues to impede the ability of NorthPoint to offer quality DSL services to end users in the Bell Atlantic territory.

1. Failure to make available unbundled DSL capable loops. Bell Atlantic refuses to make available to NorthPoint DSL capable loops *unless and until* Bell Atlantic offers a competing DSL service in that market. The substandard loops that Bell Atlantic makes available thus limit consumers opportunity to get DSL services that otherwise could be delivered today. In its August 1999 *Advanced Services Order*, this Commission ordered that incumbents make available “DSL capable loops” to competitors regardless of whether they offered the service themselves. This “gating” of competitors while Bell Atlantic “catches-up” is specifically prohibited by Commission orders and harms consumers.
2. Failure to provision alternate copper loops. In the absence of DSL capable loops, NorthPoint specifically requests – as provided for by contract and Commission orders – that Bell Atlantic provide “clean copper” loops. Nevertheless, Bell Atlantic refuses to take any “affirmative steps,” as ordered by this Commission, to locate alternate copper where a customer is served on fiber or through a digital loop carrier (DLC). Fiber and DLCs, through which about one-quarter of all loops pass, impede DSL services. By refusing to take simple steps to make available all-copper loops, Bell Atlantic denies the availability of DSL services to a substantial number of end users that happen to be served on loops that pass through digital loop carriers. Bell Atlantic's refusal to provision alternate copper stands in sharp contrast to other carriers that routinely and readily provide alternate copper by switching existing voice customers to fiber and DLCs.
3. Failure to acknowledge or to meet provisioning and FOC intervals. Bell Atlantic refuses to acknowledge the *existence* of the two-day FOC interval and five-day digital loop provisioning interval in its interconnection agreements with NorthPoint, let alone to abide by them. Thus, there is in Bell Atlantic's mind literally *no* obligation to meet any timeline

when provisioning loops for competitive LECs like NorthPoint. Further, Bell Atlantic continues to miss more than 20% of its committed install dates for UNE loops even when it does finally provide committed installation dates.

4. Failure to provide meaningful information for "rejected" loop orders. Bell Atlantic routinely rejects NorthPoint loop orders with the cryptic note, "no facilities." This provides no information about *why* a loop was not provisioned, *whether* a loop may be made available, or *what* Bell Atlantic is doing to meet its provisioning obligation. In the absence of meaningful information about "reject" orders, Bell Atlantic's failures cannot be scrutinized and customers who *might* have had service must go without it.
5. Refusal to provide parity Operating Support Systems for loop pre-ordering. Bell Atlantic refuses to provide NorthPoint with pre-ordering information about loop condition and length. As a result, every NorthPoint order with Bell Atlantic is a game of chance: without pre-ordering loop information, NorthPoint cannot tell a customer what kind of service it can receive until *after* the unbundled loop is provisioned. When that service fails to meet end user expectations, consumers grow frustrated and NorthPoint's reputation suffers.
6. Failure to test for working circuits. When Bell Atlantic installs new unbundled loop circuits for NorthPoint, it fails to test those circuits with NorthPoint as required by Bell Atlantic's own policies. As a result, loops are delivered that do not work, and end users are harassed with repeated service calls and delays that should have been avoided.
7. Failure to provide essential "demarc" information. Bell Atlantic also fails to provide critical "demarc" information. "Demarc" information identifies the NorthPoint UNE loop and is used by inside wire technicians to connect the copper pair at the utility closet to the end user's inside wire. Without "demarc" information, this inside wire technician cannot complete service and must be dispatched again *after* another Bell Atlantic technician returns to provide the necessary tags and "demarc" information. This delays service and annoys end users.
8. Untimely collocation quotes. Bell Atlantic fails to deliver timely collocation space by delaying quotes and delivering collocation space that is incomplete. As a result, NorthPoint plans to enter new wire-center markets must be shelved for sometimes more than 100 days (in addition to the four months "required" by Bell Atlantic for cage construction), while Bell Atlantic continues to outfit its own central offices to provide a competing DSL product.
9. Failure to provide ordering codes. Bell Atlantic, after delivering collocation space to NorthPoint, impedes the use of this space by failing to deliver critical "Carrier Facilities Assignments," or CFAs. Bell Atlantic requires NorthPoint to use these CFAs to order transport and other service that are a prerequisite to initiating service from a wire-center. Many times these CFAs are withheld for weeks and often, when provided, are rejected by Bell Atlantic's own ordering systems.
10. Malfunctioning Ordering Interface (GUI). Bell Atlantic's vaunted ordering GUI – "DCAS" – does not work. For months, Bell Atlantic has failed to provide responses to

NorthPoint loop orders. For months, NorthPoint's loop orders have been "rejected" or "confirmed" for installation without *any* notice to NorthPoint (or, as a result, to end users). These problems result in Bell Atlantic dispatches to end user premises without notice (where end users often were unprepared to provide access), in frustratingly long waits with no answers about service availability, or in cancellation of pending installations without notice. In the face of repeated demands for repair from NorthPoint, Bell Atlantic insisted the errors were NorthPoint's. But last month, Bell Atlantic acknowledged that this was a pervasive *Bell Atlantic* problem with no obvious solution other than a troublesome manual workaround for NorthPoint's provisioners. Even today, this problem persists. Meanwhile, NorthPoint's provisioners must call BA directly *on every pending order, every day* to assure completion. This results in thousands of extra hours of work that severely limits the number of orders that can be processed on a daily basis, and is totally inconsistent with the increasing demand for NorthPoint's services.

11. Cancellations of live orders. Bell Atlantic has cancelled-out live NorthPoint customers and disconnected service. Bell Atlantic's defective OSS has shown live circuits as "cancelled," causing Bell Atlantic technicians to disconnect and re-use loops on which NorthPoint end users are presently enjoying DSL services. Disconnected customers blame NorthPoint.
12. Failure to repair malfunctioning loop circuits. Bell Atlantic fails to perform proper line maintenance. When NorthPoint issues "trouble tickets" to correct line problems, Bell Atlantic technicians frequently "close out" these tickets with no action, and without notice to NorthPoint. As a result, NorthPoint customers are provided no notice or information on their complaints and services remain "out" for unnecessarily long periods.
13. Bell Atlantic has failed to dedicate sufficient resources to enable local competition. In the face of all of these problems and hundreds of hours of dialogue from NorthPoint going back to September 1988, Bell Atlantic has failed to give its wholesale account team the resources or authority to fix problems. Hard-working Account Executives are unable to respond timely due to workload allocations that are well beyond other incumbent LEC account managers. Bell Atlantic Account Executives also have a difficult time getting sufficient attention or resources to resolve problems. As a result, though Bell Atlantic recognizes and concedes many problems, they persist for months, denying consumers the benefit of advanced services and impairing competitors' businesses.

The provisioning of DSL service to end users is an inter-dependent process that requires all parties to perform their functions reliably and timely. When Bell Atlantic fails to do its part, services to end users are delayed, denied, or suffer in quality. Moreover, because Bell Atlantic is NorthPoint's only wholesale provider of network elements and related services, each of Bell Atlantic's "errors" and incompetencies undermines the perceived quality of *NorthPoint's* services. (This phenomenon drives NorthPoint's customers to its competitors – including Bell Atlantic – whenever Bell Atlantic undermines NorthPoint's service.) At this crucial time in the DSL market – while the actions of Bell Atlantic persist in degrading NorthPoint services – these important issues demand immediate redress.

III. Background and Description of NorthPoint Operations

NorthPoint provides wholesale broadband telecommunications services to Network Service Providers ("NSPs"). NorthPoint's network is designed and built to carry data traffic from end users to NorthPoint's NSP customers over different flavors of Digital Subscriber Line (DSL) technology. NorthPoint provides service through a combination of its own network facilities as well as unbundled loops and transport.

NorthPoint enters a market by purchasing collocation in incumbent LEC central offices. While collocation orders are pending, NorthPoint secures transport and network services, network and monitoring equipment, frames, cross-connections, establishes necessary services at a regional NorthPoint "node," and begins marketing plans for the region. Successful and timely entry requires that all parties – including the ILEC – meet their "deliverables" in this "just-in-time" methodology.

Once NorthPoint has equipped a collocation cage and is selling services, NorthPoint requires only that the ILECs meet contractual obligations – provide unbundled loops and transport as required by contract and Commission orders. NorthPoint's DSL service requires "clean copper" loops, free of bridged-taps, load coils, fiber optics, or intervening electronics such as UDLCs and IDLCs. With such unbundled "DSL capable" loops, NorthPoint can provide Symmetric-DSL service at lengths of up to 23,000 feet from the central office and IDSL services at lengths exceeding 40,000 feet.

NorthPoint has a sophisticated Back Office Support System (BOSS) that tracks orders and services, and provides support and information to its NSP customers about the status of their orders. Today, NorthPoint is using the "GUI" interfaces made available by the incumbent LECs for pre-ordering and ordering of loops and transport, but these are insufficient to handle the volumes that will result from the commercial arrangements recently achieved by NorthPoint and a number of NSPs. Accordingly, NorthPoint is in the final stages of developing electronic interfaces to facilitate "flow-through" of DSL orders. Absent incumbent interference, NorthPoint is poised to continue its leadership in the deployment of DSL networks and services at an increasingly rapid pace.

IV. Discussion

Bell Atlantic's actions hurt consumers. Bell Atlantic's policy of denying DSL capable loops to competitors until Bell Atlantic offers a competing retail product means that consumers cannot get DSL services *until* Bell Atlantic is ready for them to have it, even though competitors such as NorthPoint are ready, willing, and able to meet their demand. Further, Bell Atlantic's policy of impeding competitive offerings is just the kind of "gating" that the Commission prohibits.

The Commission has made it clear that Bell Atlantic's practices are prohibited. The Commission has ordered the incumbent LECs to make loops available to competitors to facilitate the *competitors'* service offerings, not their own. Thus, ILECs must unbundle DSL capable loops

and, where such loops are not already properly conditioned for DSL, must take "affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities." *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, MO&O and NPRM, CC Docket 98-147 (FCC No. 98-188 August 7, 1998) (the "*Advanced Services Order*" or "*Advanced Services NPRM*") at ¶ 53. Nor can incumbent LECs make competitors wait for Bell Atlantic to "catch up" with its own retail DSL services. The Commission has held that an incumbent LEC cannot deny competitors access to unbundled DSL capable loops on the grounds that the ILEC itself does not offer such a service, or that the ILEC service offering is different. *Id.*

Sections 251(c)(3) and (6) of Telecommunications Act requires that ILECs provide collocation and unbundled elements on *rates, terms and conditions that are just, reasonable and nondiscriminatory*. Thus, the provision of unbundled elements is more than a *theoretical* leasing arrangement. Rather, UNEs must be made available in a manner that "facilitates" the provision of services, not delays or impedes it. See e.g., FCC Rule 515.307(c). To comply with this standard, Bell Atlantic must not engage in conduct that frustrates the use of collocation space or unbundled elements.

As the Commission has stated, "just, reasonable and nondiscriminatory" terms and conditions

require the incumbent LECs to provide unbundled elements under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete. Such terms and conditions should serve to promote fair and efficient competition. This means, for example, that incumbent LECs may not provision unbundled elements that are inferior in quality to what the incumbent provides itself because this would likely deny an efficient competitor a meaningful opportunity to compete. We reach this conclusion because providing new entrants, *including small entities*, with a meaningful opportunity to compete is a necessary precondition to obtaining the benefits that the opening of local exchange markets to competition is designed to achieve. *First Report & Order* at ¶ 315.

For several months, and despite hundreds of daily protests and inquiries from NorthPoint, Bell Atlantic has flouted, ignored, or simply failed to abide by the requirements of the Act and Commission orders. While NorthPoint has sought to resolve these various issues with the appropriate Bell Atlantic counterparts or as directed by Bell Atlantic, these efforts have proven fruitless.

A. The Commission's Enforcement Division May and Must Act to Halt Bell Atlantic's Continued Violations of Obligations Imposed Under Federal Law

The Commission's enforcement division has both the jurisdiction and a mandate to address NorthPoint's dispute with Bell Atlantic. First, Commission jurisdiction over complaints arising under the Communications Act is very broad. Section 208(a). Second, with regard to complaints related to the failure to provision DSL capable loops and the failure of incumbent LECs to provide parity pre-ordering and ordering systems for DSL capable loops, the Commission has

specifically invited competitive LECs to bring disputes directly to the Commission for resolution in the expedited complaint process. *Advanced Services Order* at ¶¶ 53 and 171.

Section 208(a) grants to the Commission broad dispute resolution authority. It states, in part, that

Any person . . . complaining of anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof, may apply to said Commission by petition. . . .

Any doubts placed by the Eighth Circuit Court of Appeal upon the extent of Commission jurisdiction to resolve disputes related to the implementation of local competition are now moot. See *Iowa Utilities Board v. Federal Communications Commission*, 120 F.3d 753 at 796, 804 (9th Cir.1997); see also *In the Matter of the Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers*, CC Docket 96-238 (FCC No. 98-154) (July 14, 1998) (*the "Expedited Complaint Order"*). The Eighth Circuit's limitation on FCC jurisdiction has been vacated by the Supreme Court in its *Iowa Utilities Board* decision in January. *AT&T v. Iowa Utilities Board*, __ U.S. __, slip. op. at 7, 9 (January 25, 1998.) Indeed, the Supreme Court's affirmation of the Commission's jurisdiction was simple and clear: "Since Congress expressly directed that the 1996 Act, along with its local-competition provisions, be inserted into the Communications Act of 1934, 1996 Act, 1(b), 110 Stat.56, *the Commission's rulemaking authority would seem to extend to implementation of the local-competition provisions.*" *Iowa Utilities* slip. op. at 7 (emphasis added).

The Commission, moreover, has specifically invited parties seeking redress related to the provision of DSL services to seek it from the Commission directly. In *the Advanced Services Order*, the Commission restated the right of parties to petition the Commission for relief from discriminatory LEC practices.

In addressing the denial of parity in the provision of unbundled loop elements – which is directly at stake in NorthPoint's present petition – the Commission stated that a petition to the Commission directly is a non-exclusive avenue for relief: "[t]o the extent that a competitive LEC cannot obtain nondiscriminatory access to an xDSL capable loop, or any other loop capabilities to which it is entitled by virtue of section 251(c)(3) and the *Local Competition Order*, the competitive LEC can pursue remedies before the Commission and the appropriate state commissions." *Advanced Services Order* at ¶ 55. And with regard to the provision of meaningful pre-order loop information on a non-discriminatory basis – also at issue here – the Commission stated that "to the extent that a competitive LEC cannot obtain nondiscriminatory access to operations support systems, competitive LECs can pursue remedies for violations of our requirements before the Commission and the appropriate state commissions." *Advanced Services NPRM* at ¶ 157.

In the *Advanced Services Order* addressing the discriminatory treatment by incumbent LECs of competitive LECs that offer advanced services, the Commission cited the availability of the

Accelerated Docket as outlined in the *Expedited Complaint Order*. The Accelerated Docket is particularly appropriate here. Given the market exigencies detailed in this petition, advancing NorthPoint's claims in the Accelerated Docket "will afford competitive market participants some measure of certainty that is necessary effectively to map out their business strategies and to stage their capital investment in order to achieve their corporate goals." *Expedited Complaint Order* at ¶ 10. Indeed, because NorthPoint and other xDSL competitors are actively marketing services nationwide, this measure of certainty is even more critical.

Finally, while State Commissions may serve as an *alternate* venue to this Commission, because of the multiplicity of claims and the primacy of the federal law issues presented, the Commission is the only body that can provide a *comprehensive* resolution of disputes between Bell Atlantic and NorthPoint. It is accordingly appropriate, and in the interest of sparing scarce resources in the several States where Bell Atlantic's actions are in dispute, that this Commission address the entirety of the claims presented in this matter.

B. Bell Atlantic Has Violated its Federal Law Obligations in At Least 13 Distinct Ways

1. Bell Atlantic Refuses to Unbundle DSL capable Loops Before It Offers its Own Competing Retail Products

Bell Atlantic refuses to unbundle DSL capable loops in states where Bell Atlantic does not itself offer a competing DSL retail product. This practice violates FCC rules and increases costs and delays for NorthPoint and its customers.

Bell Atlantic is required to unbundle DSL capable loops pursuant *both* to FCC rules *and* Bell Atlantic's interconnection agreements with NorthPoint. The Commission recently restated its order that, "pursuant to section 251(c)(3) of the Act, [incumbent LECs are required] to provide unbundled loops capable of transporting high speed digital signals." *Advanced Services* at ¶ 52. Further, the Commission has stated that ILECs must provide DSL capable loops and must, if technically feasible, "take *affirmative steps* to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities." *Advanced Services Order* at ¶ 53.² (Performing such conditioning can no longer be questioned as "technically feasible" because Bell Atlantic routinely conditions such loops for its own DSL offerings.)

² Bell Atlantic and other incumbents have appealed this order, but have not obtained an order staying the provisions of ¶ 52-53 of the *Advanced Services Order*.

NorthPoint is entitled to order DSL capable loops pursuant to its contracts with Bell Atlantic,³ but Bell Atlantic has declined to make them available because such loops are “not ready” except in markets where Bell Atlantic is offering its competing DSL product. The unavailability of proper DSL capable loops increases the cost and delay associated with provisioning DSL services in Bell Atlantic territory, diminishes the quality of service, and undermines the competitive advantages that NorthPoint properly achieved in beating Bell Atlantic to market. The consequence is that end users are denied the benefits of competitive services.

2. Bell Atlantic Ignores Commission and Contract Requirements to Place NorthPoint Loops on Alternate Copper Loops

So long as Bell Atlantic refuses to provide DSL capable loops, NorthPoint is forced to purchase unbundled “ISDN-capable” loops. ISDN loops, like DSL loops, are free of bridged taps and load coils, but unlike DSL, ISDN can be provisioned over fiber and through certain electronic DLCs. In ordering ISDN-capable loops, NorthPoint may or may not get the all-copper loop that is required for DSL high bit-rate services.⁴

As an interim measure, and to avoid having to deny or limit service to an end user because of intervening fiber-optics or DLCs, NorthPoint has repeatedly requested that Bell Atlantic provide ISDN-capable loops on “copper only.” Pursuant to its contract with NorthPoint and FCC rules, where the existing loop is deployed through fiber or DLCs, Bell Atlantic is required to locate an alternate copper pair and to place NorthPoint’s service on *that* pair, where one exists. Thus, “spare” copper – that is, copper wires that can be made available to NorthPoint by switching a voice customer onto the loop served through fiber or a DLC – must be provided to NorthPoint when it orders unbundled “copper only” loops.

Bell Atlantic has failed to take any affirmative steps to make available “copper only” loops to NorthPoint and has, despite its contract and Commission orders, refused to acknowledge any such obligation.

The Commission recently restated that the ILECs are obligated to unbundle DSL capable loops wherever “technically feasible,” and noted that the unbundling “requirement includes the

³ In New York, the Bell Atlantic contract describes the “2-Wire ADSL-Compatible Link” (ADSL 2W) as a transmission path “provided over a 2-wire non-loaded twisted copper pair provisioned using revised resistance design guidelines and meeting ANSI Standard T1-413-1995-007R2.” (ICA-NY 9.2.2.) In Washington, the Bell Atlantic contract includes ADSL-2W loop with similar specifications. (ICA-WDC 11.2.4.)

⁴ Where regular DSL services cannot be provided because the loop has fiber or DLCs, NorthPoint can sometimes offer a substitute product – IDSL – that is slower but that is not impeded by fiber or DLCs.

obligation to unbundle high-speed data-compatible loops *whether or not a remote concentration device like a digital loop carrier is in place on the loop.*" *Advanced Services* at ¶ 167. Thus, "[f]or example, if a carrier requests an unbundled loop for the provision of ADSL service, and specifies that it requires a loop free of load coils, bridged taps, and other electronic impediments, the incumbent *must condition* the loop to those specifications, subject only to considerations of technical feasibility." *Id.* at ¶ 53. (emphasis added). This obligation is not discretionary.

NorthPoint's Interconnection Agreements with Bell Atlantic also state that if NorthPoint requests "one or more [unbundled loops] provisioned via Integrated Digital Loop Carrier or Remote Switching technology deployed as a [loop] concentrator, *Bell Atlantic shall, where available, move the requested [loops] to a spare, existing physical [loop] at no additional charge....*" Bell Atlantic-WDC at § 11.7.2; *see also* Bell Atlantic-NY at § 9.5.4 (same).

Providing "all copper" loops as a workaround to DLCs is clearly "technically feasible." Already, Bell Atlantic is performing this service to itself in territories where it offers retail DSL services, and other ILECs routinely replace analog customers onto DLCs to free-up alternate copper for unbundled DSL loops. Pacific Bell, for example, regularly provides NorthPoint with a clean copper pair by moving voice customers off copper and on to fiber and DLCs. In Pacific Bell territory, this practice has reduced failed installations from "no facilities" to a minimum and expanded greatly the number of end users who can enjoy the DSL service offered by NorthPoint. Whereas this practice by Bell Atlantic denies DSL services to up to 20% of potential end users, in California Pacific Bell's practice of taking "affirmative steps" to locate copper loops has practically eliminated this service obstacle.

Bell Atlantic is intransigent and openly defies requests that it comply with its contract and the Commission's order to take "affirmative steps" to make alternate copper available to competitive LECs like NorthPoint. For example, in a letter of October 7, 1998 to NorthPoint on this topic, Bell Atlantic said that it had no obligation to find alternate copper loops on NorthPoint's unbundled ISDN loop orders.⁵ Further, Bell Atlantic stated that even were it to seek alternative copper it would do so only "where facilities can *be made readily available*," hardly tantamount to the Commission's statement that ILEC's "must condition" DSL capable loops on alternate copper.

Bell Atlantic must be required to provide loops on copper wherever "technically feasible" and the obligation to take "affirmative steps" to create alternative copper loops from existing voice circuits must be reaffirmed. This practice alone could expand the reach of competitive DSL

⁵ This, of course, is tautological: NorthPoint only orders ISDN-capable loops because Bell Atlantic, in violation of its contract and Commission orders, refuses to make available simple DSL capable loops. Regardless, there is nothing in the contract that suggests that Bell Atlantic's obligation to provision alternate copper is somehow inapplicable to ISDN-capable, or "premium links."

broadband availability to thousands of users who would, if Bell Atlantic ignores Commission orders, simply be denied the service.

3. Bell Atlantic Acts in Bad Faith By Refusing to Acknowledge FOC and Loop Provisioning Intervals in Its Contracts with NorthPoint and Fails to Meet Those Intervals

Section 9.7.1 of the Bell Atlantic (MA and NY) interconnection agreement provides that "[w]ithin two (2) business days of BA's receipt of a Service Order, BA shall provide NorthPoint the firm order commitment ('FOC') date according to applicable performance interval dates...."

Schedule 8.1 of the Bell Atlantic (MA and NY) interconnection agreement specifies that unbundled "Premium Links – Two-wire Digital" are to be provisioned within five business days of a valid order.

Because NorthPoint's entire business is premised upon the timely installation of unbundled digital loops and transport, this provisioning interval was the subject of substantial attention during interconnection discussions.

In September 1998, as Bell Atlantic's ability to meet intervals failed to improve, NorthPoint wrote to Bell Atlantic to urge that this provisioning failure promptly be remedied.

In its response, Bell Atlantic simply denied that the provisioning intervals in Section 9.7.1 or Schedule 8.1 even applied to "digital links." Instead, Bell Atlantic insists that "BA-MA does not believe either of the FOC intervals (schedule 8.1 or section 9.7.1) were established with other than unbundled *analog loops* in mind." (Yanez Letter, October 7, 1998, *emphasis added*.) Bell Atlantic's attempt to interpret contract language relating to "Digital Links" as only applying to "analog loops" defies the law and common sense.

In addition to refusing to acknowledge its five-day provisioning interval, Bell Atlantic even fails to meet its own firm order commitment dates – even those that (because Bell Atlantic ignores its contract) exceed the five-day interval. Even when NorthPoint gets a FOC with an installation date that exceeds the five-day interval, Bell Atlantic still misses a number of its appointments. NorthPoint's records indicate that, from January 1, 1999 through March 5, 1999, Bell Atlantic missed its firm order commitment date 20% of the time. Customers who were told to await installation by Bell Atlantic are left waiting when Bell Atlantic misses FOC dates. Bell Atlantic's lax effort to meet its appointments frustrates customers and causes NorthPoint to suffer in end user's perceptions.

Bell Atlantic's intransigence in the face of its contractual commitments, and its inability to provision service within its own committed intervals, substantially impairs the quality of NorthPoint service and defeats the reasonable expectations of end users for timely delivery of services. The Commission should require Bell Atlantic to meet its provisioning intervals and to end the discriminatory treatment of competitive LECs in providing DSL capable loops.

4. Bell Atlantic Fails To Inform NorthPoint of the Reasons It Rejects Loop Orders

Many of NorthPoint's loop orders to Bell Atlantic are rejected with a cryptic "no facilities" code. This response says nothing about what specific impediments were found in attempting to provision the loop, and provides no information about what measures Bell Atlantic took to relieve those impediments by conditioning the loop for DSL services. Bell Atlantic's refusal to provide information about loop conditions and its own efforts to provision DSL capable loops denies NorthPoint the ability to scrutinize Bell Atlantic's compliance with its obligations. In a few instances where NorthPoint prodded Bell Atlantic to verify a "no facilities" rejection, Bell Atlantic "found" an alternate copper pair and provisioned the unbundled loop.

Bell Atlantic's refusal to provide information about *why* loops are not available and *whether* loops can be made available persists, and suggests bad faith. NorthPoint raised this issue with Bell Atlantic in a letter in September 1998. Rather than providing assurances that it would comply with the law in a manner subject to further scrutiny, Bell Atlantic merely stated that it had "reviewed its records of NorthPoint's loop orders and has not found any indication that BA-MA has inaccurately rejected any orders based on lack of facilities." (Yanez ltr, October 1998.)

To ensure that Bell Atlantic complies with Commission orders and its obligation to NorthPoint, Bell Atlantic should be ordered to provide detailed and complete loop information whenever it proposes to reject DSL orders, and to take "affirmative steps" to fulfill those orders on clean copper loops.

5. Bell Atlantic Refuses To Provide NorthPoint With Access To Pre-Ordering Information On Loop Quality And Conditions

Bell Atlantic's refusal to make available pre-ordering interfaces that provide information on loop condition and quality makes ordering DSL services in Bell Atlantic-North a burdensome and uncertain exercise. In the absence of meaningful pre-ordering information on loops, NorthPoint has no means of determining whether the loop will be capable of carrying the service ordered by the end user until *after* the loop is provisioned by Bell Atlantic. Loops may be installed with fiber or intervening electronics that make the provision of high speed DSL services impossible. The absence of meaningful pre-order information results in frustrated expectations where services are unavailable or less than expected, and greatly impedes the quality of the service that NorthPoint can provide to its NSP customers.⁶

⁶ Bell Atlantic has pledged to make available some pre-ordering loop functionality through the GUI ordering interface when, and only when, Bell Atlantic has caught up to NorthPoint and is offering competing DSL products out of the serving wire-centers. Clearly, "gating" the provision of DSL competitors by withholding key pre-order functionality until the incumbent is caught-up is a violation of Commission rules. Further, to the extent that Bell Atlantic has this

The denial of pre-ordering information on loop quality and condition is discriminatory and anti-competitive. It is discriminatory because Bell Atlantic makes this information available to itself in real-time, greatly enhancing the "visibility" of its offerings and the information that it can offer its retail customers. Withholding this functionality from NorthPoint thus violates the Commission's order that "incumbent LECs are also required to provide competing carriers with nondiscriminatory access to operations support systems (OSS) functions for pre-ordering, ordering, and provisioning loops." *Advanced Services Order* at ¶ 56. This lack of parity is itself grounds for Commission action.

Second, the denial of such pre-ordering information is anti-competitive. As the Commission recently acknowledged, competitive DSL providers "must be able to determine during the pre-ordering process as quickly and efficiently as can the incumbent whether or not a loop is capable of supporting xDSL services." Accordingly, the Commission tentatively concluded that "incumbent LECs should provide requesting competitive LECs with sufficient detailed information about the loop so that competitive LECs can make an independent determination whether the loop is capable of support the xDSL equipment they intend to install," just as Bell Atlantic does for itself. *Advanced Services Order* at ¶ 157.

The Commission should require Bell Atlantic promptly to make available to NorthPoint all pre-ordering systems for loop condition and length information in all of its territory.⁷

6. Bell Atlantic Fails To Test Circuits

Bell Atlantic is required to provide unbundled elements in a *manner* that is just, reasonable, and nondiscriminatory. But despite repeated complaints, Bell Atlantic technicians continue to provide unbundled loops without performing required testing with NorthPoint.

Circuits that are not properly tested often do not work, and require repeated dispatches of Bell Atlantic technicians to the customer premises for "repairs." For example, from January 1 through March 5, 1999, at least 5% of NorthPoint's unbundled loops did not work because they were not properly connected to NorthPoint's collocation cage. These errors would be *eliminated* if Bell Atlantic tested circuits before tendering them. These delays frustrate end users, who associate their irritation with NorthPoint. In at least two dramatic cases, services were delayed

functionality *anywhere* in its multi-state territory, it is discriminatory to withhold it from competitors anywhere else.

⁷ The Commission noted in the *Advanced Services Order* at ¶ 157 that "to the extent that a competitive LEC cannot obtain nondiscriminatory access to operations support systems [regarding loop quality and configuration] competitive LECs can pursue remedies for violations of our requirements before the Commission...."

for almost 3 months while Bell Atlantic failed to test, then refused to test, then acknowledged its failure to install a working circuit and corrected it. No customer should have to tolerate this kind of service from the incumbent, and surely no end user should have to tolerate this kind of service from NorthPoint. (One business end user, so exhausted by Bell Atlantic's intransigence and NorthPoint's resulting poor service, dropped its order for NorthPoint service after 3 months of waiting and, unaware of the actual culprit in its suffering, switched to Bell Atlantic for its high-speed service.)

There is no reason for Bell Atlantic *not* to test circuits. In California, Pacific Bell technicians test *every* NorthPoint circuit with NorthPoint provisioners without additional charge. While Bell Atlantic has reassured NorthPoint that testing circuits is required on NorthPoint's "premium" unbundled loops, it still fails to do it.

7. Bell Atlantic Fails to Provide Critical "Demarc" Information

Bell Atlantic provides loops that are unusable to NorthPoint because Bell Atlantic fails to provide essential "demarc" information. "Demarc" information identifies the loop pair to the customer (NorthPoint) so that the loop can be located and connected to inside wire.

Bell Atlantic is installing unbundled loops for NorthPoint, but is failing to provide information to locate that loop at the customer premises. As a result, inside wire technicians from NorthPoint cannot identify the NorthPoint loop, and cannot complete service until a *further* dispatch from Bell Atlantic remedies the problem. Despite acknowledgement from Bell Atlantic that this information is *essential* to completing service, from January 21 through March 5, 13% of NorthPoint's loop orders were delayed because they had to be *returned* to Bell Atlantic for "demarc" information. Again, Bell Atlantic assures NorthPoint that "demarc" *should* be provided, but has failed to do it.

8. Bell Atlantic's "DCAS" Ordering GUI Does Not Work and Fails to Provide Responses to NorthPoint Loop Orders

NorthPoint uses Bell Atlantic's web-based Graphical User Interface, referred to as "DCAS," to place orders for unbundled loops in Bell Atlantic territory. By design, orders received by Bell Atlantic from NorthPoint are to be met with a "reply," including a "firm order commitment" (FOC) within 48 hours. (ICA 9.7.1.) These FOCs, as well as "queries" or other action on pending orders are to be delivered to NorthPoint over a dedicated gateway that NorthPoint established to facilitate the use of DCAS.

But DCAS does not work. Since at least November 1998, it has become clear that hundreds of queries, FOCs, and other actions taken by Bell Atlantic on pending orders do not reach NorthPoint's interface. This "error" means that NorthPoint's provisioners have no real idea where an order stands. Intermittent failures on the part of Bell Atlantic to properly transmit status "queries" or FOCs means that information in NorthPoint's hands may, or may not, be timely or accurate. Further, on some orders all of the "queries" and "FOCs" are lost, meaning

that orders either sit or are scheduled for installation without *any* notice to NorthPoint or the end user.

Bell Atlantic asserted in January 1999, that the failure was on NorthPoint's end, and pointed to "proof" of Bell Atlantic's timely transmission of order responses by revealing a time and date stamp in its ordering systems. Following several weeks during which NorthPoint attempted to debug its systems and its gateways, Bell Atlantic admitted that, in fact, the failure *was on Bell Atlantic's side*, and that BA was unable to identify a solution.

Bell Atlantic's DCAS still does not work, and slows NorthPoint's ability to provision new orders. Because messages received by NorthPoint are inherently unreliable, NorthPoint provisioners must track orders by telephone to Bell Atlantic *every day* from the date the order is placed to the day it is installed. Only in this way can NorthPoint be assured that it gets timely information -- such as if a FOC date changes, or if a FOC is cancelled by Bell Atlantic -- and keep its customers up to date on order status. Obviously, this kind of handholding means that NorthPoint or other data-CLECs cannot scale to commercial capacities. (NorthPoint provisioners handling Bell Atlantic orders report that many orders take, cumulatively, more than two hours of a provisioner's time to complete, and they are as a whole about 50% less efficient in handling orders than provisioners handling Pacific Bell loops.) Further, because of Bell Atlantic's defective interface, the ability of NorthPoint to assure its NSP customers that it can meet their order volumes is substantially undermined even as Bell Atlantic touts to its potential NSP partners (such as AOL) Bell Atlantic's ability to achieve large-scale commercial deployment.

The Commission should not permit Bell Atlantic to use its bottleneck control over loops and ordering to impede competitors' offerings, particularly while it ramps its own competing services. Consistent with existing Commission orders, *see, e.g., Advanced Services Order* at ¶ 157, Bell Atlantic should be required to make available immediately to competitive DSL providers whatever ordering interfaces it has available to itself anywhere, and to ensure that such interfaces work in a commercially reasonable manner.

9. Bell Atlantic's OSS Is Defective And Improperly Terminates Services to NorthPoint Customers

Bell Atlantic's service to customers such as NorthPoint is degraded because Bell Atlantic's operation and support systems have failed accurately to track live circuits. Bell Atlantic has "terminated" live NorthPoint customers on several occasions. While provisioning delays and mismanagement are vexing, termination of live customers is intolerable. These customers -- many of them commercial institutions -- are using and *depending* upon their DSL service once it has been provided. Termination of service without notice or cause serves to poison relations between NorthPoint and its customers, and even caused one end user to threaten suing NorthPoint for the business impact of service interruptions. In another case, a customer served out of the 30th Street Central Office (NY, NY) was "disconnected" from the NorthPoint DSLAM

equipment by a Bell Atlantic technician who reassigned this serving loop *without* ever notifying NorthPoint. NorthPoint was required to issue several "trouble tickets" to reinstate service after Bell Atlantic's actions, while the end user stewed in frustration over what was perceived to be NorthPoint's mistakes.

Bell Atlantic's failure to prevent and promptly rectify the "cancellation" of live customers severely impacts the ability of competitors to maintain their brands and the ability of end users to enjoy competitive broadband services. This is one of the many examples, others of which are detailed in this letter, where NorthPoint has never had such a problem except with Bell Atlantic.

In such instances, Bell Atlantic should be required to pay appropriate penalties to *end users* in connection with a statement taking full responsibility for such errors.

10. Bell Atlantic's Provision of Collocation Space is Unreliable, Disrupting the Deployment of and Timing of New Service by NorthPoint

Bell Atlantic has delayed substantially the provision of service to new Central Offices by failing to provide to NorthPoint timely quotes on collocation price and availability. Securing a collocation cage takes several steps. First, NorthPoint requests a quote and information on the availability of space in a certain central office. Bell Atlantic is required to respond in a few days (8 days in New York). If space is available and the price for collocation fits the business model, NorthPoint "orders" collocation space by sending back an application with a 50% deposit. Bell Atlantic is required to construct the cage within 120 calendar days. Thus, by its own rules, Bell Atlantic's collocation process should consume no more than 4 months. (An egregiously long time, considering that commercial collocation space – *non incumbent LEC space* – can often be provided in a week for just a few thousand dollars.)

Bell Atlantic has mismanaged and delayed the provision of cage quotes and the delivery of space, and has disrupted NorthPoint's "just-in-time" methodology for entering new markets. As discussed above, when NorthPoint "orders" a cage, it also initiates processes with vendors, contractors, and internally to assure that, when that cage is ready, NorthPoint is ready to use it. When the incumbent fails to deliver a cage on time, or delivers a cage that is incomplete (without power, light, etc.), the entire process comes to a halt.

Bell Atlantic routinely delays quotes for up to 30, 60 or 100 days. In Baltimore, 80% of the collocation quotes were late by a number of days. In Boston, eight quotes requested on April 21, 1998 were withheld for 84 days. In New York, five quotes were more than 100 days late. (Also in New York, several requests for quotes went entirely unanswered for more than 8 months. Then, instead of providing information about those cages, Bell Atlantic merely declared that the cages were "ready for pickup" by NorthPoint. This kind of mismanagement, too, imposes delays, because NorthPoint cannot initiate its "just-in-time" processes for cages delivered without sufficient notice.)

Bell Atlantic's failure to abide its own timelines for the delivery of quotes and collocation space "gates" competition. Bell Atlantic, as it rolls out its own DSL services, does not use physical collocation, and can enter new offices without *any* of the delay that it imposes on NorthPoint. The Commission should remedy this discriminatory treatment by requiring that Bell Atlantic enter new central offices by utilizing the same quote and collocation process that competitors must use.

11. Bell Atlantic Impedes the Use of Collocation Space by Withholding Ordering Codes that NorthPoint needs to Provision Service

Bell Atlantic requires that each wholesale customer identify itself and its cage location when placing orders for UNEs. Bell Atlantic issues each carrier a code, and that code *must* be used when placing orders to outfit a collocation space or to provision loops. Bell Atlantic will reject orders without an accurate "carrier facility assignment," or CFA.

Bell Atlantic has in many instances failed to provide CFAs to NorthPoint at the time of collocation cage acceptance. In others, the CFAs provided to NorthPoint do not match the assignments in Bell Atlantic's ordering databases, and NorthPoint's orders for transport and loops are rejected. NorthPoint's LEC relations managers have wasted days trying to obtain proper CFAs from Bell Atlantic in order to begin provisioning transport and loops to the cage. In some cases working CFAs were withheld for up to two weeks.

The cumulative effect of Bell Atlantic's mismanagement of collocation and CFAs is to delay the delivery of services. Without CFAs delivered timely and accurately – and without repeated handholding by NorthPoint employees to assure that Bell Atlantic completes its job – NorthPoint cannot outfit a cage with transport and loops. Accordingly, in any measure of Bell Atlantic's achievement of performance intervals for the delivery of collocation space, Bell Atlantic's impairment of the use of that space must be considered.

Bell Atlantic's failure to provide CFAs timely to NorthPoint must be remedied to assure that NorthPoint gets what it pays for – timely and useful collocation.

12. Bell Atlantic Fails To Advise NorthPoint Of The Status Or Completion Of "Trouble Tickets" Handled By Bell Atlantic Technicians.

Bell Atlantic has failed to operate in a commercially reasonable manner in resolving "trouble tickets" and repairing "down" service as reported by NorthPoint. Bell Atlantic's failures in this regard are numerous. They include: closing out trouble tickets as "resolved" without permitting NorthPoint an opportunity to retest; closing trouble tickets without resolving circuit failures on Bell Atlantic's end; and excessive waits while trouble tickets are being resolved.

While Bell Atlantic continues to report in its compliance filings that it is "closing" trouble tickets in many cases less than 24 hours after issuance, it is NorthPoint's experience that "closure" rarely equates to resolution. In many cases, such quick "closure" only results in NorthPoint having to issue a series of identical "trouble tickets" before a simple cross-connect or other Bell Atlantic provisioning fault is remedied.

Bell Atlantic's obligation to provide network elements in a "just, reasonable and nondiscriminatory" manner is not met when it stonewalls service requests from its competitive LEC customers. These failures contribute to the perception that *NorthPoint* is incapable of providing quality service while it is *Bell Atlantic* that is defying its obligations.

13. Bell Atlantic Has Failed to Dedicate Sufficient Resources to Permit Local Competition to Work

Clearly, Bell Atlantic has dedicated too little attention to meeting its obligations not to discriminate against competitive local service providers. Indeed, Bell Atlantic's wholesale account executives lack either the resources or the authority to meet the needs of competitive LEC customers. While in most incumbent LECs these managers serve no more than two to six CLECs, NorthPoint's Bell Atlantic liaison serves 16. Bell Atlantic wholesale executives cannot must sufficient resource to resolve problems, despite best intentions.⁸ But regardless of Bell Atlantic's interests or motivation, the effect of its actions is the same: customers are denied the benefits of broadband competition and NorthPoint's business is damaged. The persistence of Bell Atlantic's actions requires immediate Commission intervention.

* * *


Bell Atlantic is impeding the availability of NorthPoint broadband services to customers more than a dozen ongoing and significant ways. Individually, Bell Atlantic's "gating" policies and loop and collocation practices will frustrate and slow any competitor's offerings. Taken together, Bell Atlantic's practices are intolerable. Far from being the "best" at facilitating the goals of the Telecommunications Act in providing customer choice through competition, NorthPoint's experience to date is that Bell Atlantic's provision of unbundled elements and wholesale services is inferior to other incumbents.

⁸ The litany of problems that NorthPoint faces in Bell Atlantic territory was anticipated by the Commission's warning that "incumbent LECs have the incentive and the ability to engage in many kinds of discrimination. * * * [I] incumbent LECs could potentially delay providing access to unbundled network elements, or they could provide them to new entrants in a degraded level of quality." *First Report & Order* at ¶ 307.

NorthPoint urges the Commission to facilitate quick resolution of these various disputes and to secure, as prescribed by the Act and Commission rules, parity treatment for competitive data-CLECs in Bell Atlantic territory through whatever remedy is appropriate.

Please let us know if there is any additional information that we can provide to support the Commission's action.

Very truly yours,

The image shows two handwritten signatures in black ink. The signature on the left is 'Steven M. Gorosh' and the signature on the right is 'Michael E. Olsen'.

Steven M. Gorosh,
Vice President and General Counsel
415/659-6518

Michael E. Olsen,
Deputy General Counsel,
Gov't & Industry Affairs
415/365-6013

cc: Jacob Goldberg, Bell Atlantic (by fax and overnight mail)
Luin Fitch, United States Department of Justice
Francis Marshall, United States Department of Justice
Chairwoman M. Helmer, New York Public Service Commission
D. Martin, New York Public Service Commission
P. McGowan, New York Public Service Commission